

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

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Reg. No.: 15-010197
Issue No.: 1008;3001
Case No.: ██████████
Hearing Date: August 24, 2015
County: Wayne-District 18 (Taylor)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on August 24, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and her employer, ██████████. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearings Facilitator; ██████████ ██████████, Family Independence Manager; and ██████████ ██████████, Family Independence Case Manager.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) cases?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing recipient of FIP and FAP benefits.
2. On May 15, 2015, the Department sent Claimant a PATH Appointment Notice instructing her to attend PATH Orientation on May 26, 2015. (Exhibit A)
3. Prior to May 26, 2015, Claimant contacted the Department to request a new date to attend PATH orientation.
4. Claimant was instructed to attend PATH orientation on the new date of June 1, 2015.

5. Claimant did not attend PATH orientation on the extended June 1, 2015, date.
6. On June 4, 2015, the Department sent Claimant a Notice of Noncompliance instructing her to attend a triage meeting on June 11, 2015, to discuss whether good cause existed for her noncompliance. (Exhibit B)
7. On June 4, 2015, the Department sent Claimant a Notice of Case Action informing her that the Department intended to close her FIP case effective July 1, 2015, because for a second time, she or a group member failed to participate in employment and/or self-sufficiency-related activities without good cause. The Notice informed Claimant that the FIP case will be closed for at least six months. (Exhibit E)
8. The June 4, 2015, Notice informs Claimant that effective July 1, 2015, her FAP case would be closed because she or another person in her FAP group failed to participate in a FAP employment related activity without good cause. (Exhibit E)
9. A triage was conducted on June 11, 2015, which Claimant attended. At the conclusion of the triage, the Department determined that Claimant did not have good cause for her noncompliance.
10. On June 11, 2015, Claimant requested a hearing disputing the closure of her FIP and FAP cases.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

FIP

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

As a condition of FIP eligibility, all Work Eligible Individuals (“WEI”) must engage in employment and/or self-sufficiency related activities, such as participating in the PATH program. BEM 233A (May 2015), p. 1. The WEI can be considered noncompliant for several reasons including: failing or refusing to appear and participate with the work participation program or other employment service provider; failing or refusing to appear for a scheduled appointment or meeting related to assigned activities; failing to provide

legitimate documentation of work participation; failing to participate in a required activity; and failing or refusing to participate in employment and/or self-sufficiency related activities, among other things. BEM 233A, pp 1-4. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. The various good cause reasons that are to be considered by the Department are found in BEM 233A, pp. 4-6. BEM 233A, pp. 4-6.

A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized and in processing a FIP closure, the Department is required to send the client a notice of noncompliance, which must include the date(s) of the noncompliance, the reason the client was determined to be noncompliant, and the penalty duration. BEM 233A, pp. 1,9-11. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (April 2015). Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, pp. 8-10. A triage must be conducted and good cause must be considered even if the client does not attend, with particular attention to possible disabilities and unmet needs for accommodation. BEM 233A, pp. 8-10. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 13. Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 9. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 8.

In this case, Claimant was employed and an ongoing recipient of FIP benefits. Although it was initially unclear why Claimant was referred back to PATH orientation on May 26, 2015, the testimony from both Claimant and the Department established that because Claimant was previously employed for a sufficient number of hours, she was not required to attend PATH and her FIP was transferred to EFIP. Claimant confirmed that at the end of April 2015 she reported to the Department that her hours of employment had decreased and her FIP benefits were increased and corrected in May 2015. Thus, Claimant was required to participate in PATH as a condition of receiving FIP benefits.

The Department testified that because Claimant did not attend PATH orientation on the extended date of June 1, 2015, it sent her a Notice of Noncompliance informing her that she was required to attend a triage meeting on June 11, 2015, to discuss whether she had good cause for her failure to attend PATH orientation. (Exhibit B). The Department stated that a triage was held on June 11, 2015, which Claimant attended. The Department stated that at the triage, Claimant informed the Department that she did not attend orientation on June 1, 2015, because her child was sick. Claimant provided the Department with a letter from her child's doctor which the Department determined was insufficient, as it does not detail exactly when Claimant was at the doctor with her child.

(Exhibit C). Claimant stated that she presented the letter just to show that her child was sick and not to show that she was with the child at the doctor the day of June 1, 2015. The Department determined that Claimant did not establish that she had good cause for her failure to attend PATH orientation on June 1, 2015, and initiated the closure of Claimant's FIP case effective July 1, 2015, imposing a six month sanction for the second occurrence of noncompliance without good cause. (Exhibit E). The Department testified and Claimant confirmed that her FIP case was closed for three months in 2012 due to a first occurrence of noncompliance without good cause.

During the triage and at the hearing, Claimant confirmed that she was not at the doctor with her child on June 1, 2015. Claimant explained that she brought in the note from the doctor to support her statements that her child was sick that week. Claimant testified that during the last week in May 2015, she took her child to the hospital and that she went to the doctor to follow up. The emails between the Department and Claimant's child's doctor confirm that she was there on June 10, 2015, which is the date the letter was written. (Exhibit C; Exhibit D).

Claimant stated that on June 1, 2015, she did not have child care, as the person who was scheduled to watch her child told her that they would be unable to because the child was sick. Claimant testified that she contacted her PATH worker to get an extension or new date to attend orientation but was instructed to contact the Department. Claimant stated that prior to June 1, 2015, she contacted [REDACTED], her Department case worker and was told by [REDACTED] that she would extend the date and give her additional time to attend orientation. At the hearing, [REDACTED] could not recall the conversation. The Department confirmed being notified at the triage that Claimant had child care issues, however, the Department stated that it was not aware what type of child care issues Claimant had, as she had not applied for child development and care (CDC) benefits. The Department testified that it did not know/understand that the child care issues were related to Claimant's child being sick.

Under the facts in this case, Claimant's testimony established she had adequate child care, however, due to an unplanned factor/event (her child's illness), she was unable to attend PATH orientation on June 1, 2015, as her child care provider would not provide services that day. It was established that at the triage and prior to the negative action date, the Department was aware of the issues with respect to Claimant's lack of child care on June 1, 2015, and that Claimant's child was sick that day. The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined that Claimant did not have good cause for her noncompliance, closed Claimant's FIP case and imposed a six month sanction.

FAP

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Additionally, noncompliance without good cause with employment requirements for FIP may affect FAP if both programs were active on the date of FIP non-compliance. BEM 233B (July 2013), p. 1. An individual is disqualified from a FAP group for noncompliance when the client had active FIP and FAP benefits on the date of the FIP noncompliance; the client did not comply with the FIP employment requirements; the client is subject to penalty on the FIP program; the client is not deferred from FAP work requirements; and the client did not have good cause for the noncompliance. BEM 233B, pp. 2-3. Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. For the first occurrence of noncompliance without good cause, the Department will disqualify the client for one month or until compliance, whichever is longer. For the second occurrence of noncompliance without good cause, the Department will disqualify the client for six months or until compliance, whichever is longer. BEM 233B, p. 6.

In this case, on June 4, 2015, the Department sent Claimant a Notice of Case Action informing her that effective July 1, 2015, her FAP case would be closed for at least one month due to a failure to participate in a FAP employment related activity without good cause. (Exhibit E). The Notice also informs Claimant that her FAP case would be closed because verification of missing check stubs were not returned, however, this was unexplained by the Department. (Exhibit E). It was unclear why Claimant's FAP case closed, rather than Claimant herself being disqualified from the group, as required by policy, however. Additionally, the Department acknowledged that Claimant should not have been penalized for the FAP, as she is temporarily deferred from FAP employment related activities because she provides care for a child under age six who is in the FAP group. BEM 230B (October 2013), p. 4.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that because as discussed above, the Department did not act in accordance with Department policy when it closed Claimant's FIP case for failure to participate in employment and/or self-sufficiency-related activities without good cause and imposed a six month sanction, the Department also did not act in accordance with Department policy when it closed Claimant's FAP case for noncompliance with employment related activities without good cause.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the noncompliance sanctions/penalties that were imposed on Claimant's FIP and FAP cases;
2. Reinstate Claimant's FIP and FAP cases effective July 1, 2015;
3. Issue FIP and FAP supplements to Claimant from July 1, 2015, ongoing, in accordance with Department policy; and
4. Notify Claimant in writing of its decision.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/27/2015**

Date Mailed: **8/27/2015**

ZB / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]